

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-471V

Filed: May 1, 2019

UNPUBLISHED

RITA CZYZEWSKI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.

Ashley Monique Simpson, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On March 30, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccination administered on September 13, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 21, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for a SIRVA. On April 30, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$112,500.00 and

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

\$11,569.44 to satisfy a New Jersey Medicaid lien. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards**

- (1) Petitioner a lump sum payment of \$112,500.00 in the form of a check payable to petitioner, Rita Czyzewski.** This amount represents compensation for all damages that would be available under § 300aa-15(a); and
- (2) A lump sum payment of \$11,569.44, representing compensation for satisfaction of the State of New Jersey Medicaid lien, payable jointly to petitioner³ and to:**

Treasurer, State of New Jersey
Division of Revenue, Lockbox 656
200 Woolverton Avenue, Bldg. 20 Trenton, NJ 08646
File Number: DMA/57018

The clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Petitioner agrees to endorse this payment to Treasurer, State of New Jersey.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

RITA CZYZEWSKI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-471V

Chief Special Master Dorsey
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On March 21, 2019, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. Thereafter, on March 21, 2019, Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”).

I. Compensation for Vaccine Injury-Related Items

Based on the evidence of record, respondent proffers that petitioner should be awarded **\$112,500.00**. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a), with the exception of the reimbursement of the Medicaid lien, below. Petitioner agrees.

Respondent further proffers that petitioner should be awarded funds to satisfy a State of New Jersey Medicaid lien in the amount of **\$11,569.44**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of New Jersey may have against any individual as a result of any Medicaid payments that the State of New Jersey has made to or on behalf of Rita Czyzewski from the date of her eligibility for benefits through

the date of judgment in this case as a result of his vaccine-related injury suffered on or about September 13, 2016, under Title XIX of the Social Security Act. Petitioner agrees.

II. Summary of Recommended Payments

Respondent recommends that the compensation provided to petitioner be made through two lump sum payments as described below:

- (1) A lump sum payment of **\$112,500.00** in the form of a check payable to petitioner,¹ and
- (2) A lump sum payment of **\$11,569.44**, representing compensation for satisfaction of the State of New Jersey Medicaid lien, payable jointly to petitioner and to:

Treasurer, State of New Jersey
Division of Revenue, Lockbox 656
200 Woolverton Avenue, Bldg. 20 Trenton, NJ 08646
File Number: DMA/57018

Petitioner agrees to endorse this payment to Treasurer, State of New Jersey.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to the entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

S/ ASHLEY SIMPSON

Ashley Simpson
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington D.C. 20044-0146
Tel: (202) 305-0253
Email: Ashley.M.Simpson@usdoj.gov

Dated: April 30, 2019